IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.785 OF 1994

1. M/s.Bohra Pratisthan, a registered partnership firm having its office at 26, Shastri Marg, Udaipur.

2. Hemant Bohra, Partner of Petitioner No.1 firm, having his office at 26, Shastri Nagar, Udaipur. .. Petitioners.

V/s.

1. Union of India, through the Ministry of Law, Justice and Company Affairs, Aayekar Bhavan, New Marine Lines, Bombay - 400 020

2. The Collector of Customs, New Customs House, Ballard Estate, Bombay 400 038.

3. The Addl. Collector of Customs, Group II-A, New Customs House, Ballard Estate, Bombay 400 038.

4. The Bombay Port Trust, through the Board of Trustees having its office at Jeevan Deep, Shoorji Vallabhdas Marg, Ballard Estate, Bombay 400 038 .. Respondents.

Mr.Bulchandani with Mr.J.P. Shah i/b. M/s.Kamal & Co. for the petitioners.

Mr.R.V. Desai, senior counsel with Mr.S.M. Shah for respondent Nos.1 to 3.

Mr.U.J. Makhija i/b. Mulla & Mulla for respondent No.4.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 17TH MARCH, 2005.

ORAL JUDGMENT (Per Vijay C. Daga, J.) :

1. Heard the learned counsel for the rival parties. Perused petition and counter-affidavit.

THE FACTS :

2. This petition is directed against the action of the respondent No.2 ordering cancellation of the detention certificate pursuant to the endorsement on the bill of entry on March 5, 1994.

3. It is not in dispute that pursuant to the public notice dated July 29, 1985 detention certificate was issued in favour of the petitioners by the Custom Authorities for the period August 30, 1993 to February 18, 1994. It is also not in dispute that upon presentation of the said detention certificate, the respondent No.4 - Bombay Port Trust (B.P.T.) did accept 20% of the amount of their charges and granted remission for the balance 80%.

4. The Bombay Port Trust, respondent No.4 subsequent to the grant of above remission appears to have realised that the detention certificate required signature of the Deputy Collector of Customs and not of the Assistant Collector of Customs. In this view

of the matter, the detention certificate was returned to the petitioners for getting it endorsed from the Deputy Collector of Customs.

5. On presentation of the said certificate to the Customs, it was cancelled with an endorsement thereon reading as, "the certificate is cancelled as per the notings of the Additional Collector of Customs." This action of the customs is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

SUBMISSIONS :

6. The learned counsel appearing for the petitioners contends that pursuant to the public notice the detention certificate was rightly issued. In his submission public notice nowhere required signature either of the Deputy Collector or any other officer above the rank of Deputy Collector. That since the goods were detained pending test report and that the facility of clearance against the provisional assessment was denied to the petitioners as such petitioners were very much entitled to have the detention certificate on merits for the period for which the goods were detained by the Customs. It was further submitted that at any rate; before

resorting to cancellation of the detention certificate, an opportunity of hearing ought to have been given to the petitioners' since the cancellation was to cause severe financial loss to the petitioners. Lastly, it was canvassed that the detention certificate having been accepted and acted upon by the Bombay Port Trust by granting remission of 80% of the B.P.T. charges, it was not open for the Customs to cancel the said detention certificate.

PER CONTRA :

7. Mr.R.V. Desai, the learned senior counsel appearing on behalf of the Revenue tried to support the impugned action. He could not satisfy us as to why the petitioners were not entitled to have an opportunity of hearing before the cancellation of the detention certificate. He could not offer any justification for non-grant of opportunity of hearing. He also could not substantiate how the grant of detention certificate was bad bereft of the technical defect that it was signed by the Assistant Collector; why fresh certificate was not issued to the petitioners.

CONSIDERATION :

8. Having heard rival parties, without going to the larger question as to whether the public notice required signature of the Deputy Collector or not; one thing is clear that before cancellation of the detention certificate, it was obligatory on the part of the Customs to afford an opportunity of hearing to the petitioners as the action was to result in civil consequences. No such opportunity was given to the petitioners with the result the impugned action of cancelling the detention certificate is clearly in breach of principles of natural justice.

9. Apart from this, the detention certificate was acted upon by the Bombay Port Trust and 80% remission was granted by them in favour of the petitioners as such it could not have been cancelled. At the most defect thereof could have been removed. So far as merits are concerned, it is not in dispute that the bill of entry was submitted by the petitioners and on the same day the PD Bond was executed and that the goods were detained pending receipt of test report. In the circumstances, even on merits the petitioners were entitled to have the detention certificate.

10. In the above circumstances, no useful purpose will be served by remanding the matter back to the authorities below with direction to afford an

opportunity of hearing to the petitioners. This petition is pending in this Court for past 10 years. If the petitioners were entitled to have the detention certificate, they are entitled to have it. We, for the stated reasons, do not propose to remand this matter and hold that the interest of justice would be met by making the rule absolute in terms of prayer clauses (a) and (b) with declaration that the detention certificate covering the detention period from August 30, 1993 till the issuance of the detention certificate is legal and valid with further direction that the petitioners shall be entitled to all the consequential reliefs.

11. Rule is accordingly made absolute in terms of this order. No order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)